

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 11-O-13187-LMA
)	
WILLIAM LYNN SMITH, JR.,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 242143,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent William Lynn Smith, Jr. (respondent) was charged with failing to obey a court order, failing to cooperate in a State Bar investigation, and misrepresentation to the State Bar. He failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.¹

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that if an attorney's default is entered for failing to respond to the notice of disciplinary charges (NDC), and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.²

¹ Unless otherwise indicated, all references to rules are to this source.

² If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied, and therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on May 10, 2006, and has been a member since then.

Procedural Requirements Have Been Satisfied

On November 28, 2011, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, at his membership records address. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) As of January 20, 2012, the State Bar had not received the return receipt card.

Respondent had actual knowledge of this proceeding, as (1) he requested and attended an Early Neutral Evaluation Conference; (2) Deputy Trial Counsel William Todd (DTC Todd) spoke with respondent on January 3, 2012, by telephone, and respondent claimed that he would appear at that day's status conference, but he failed to do so; (3) DTC Todd had another conversation with respondent later in the day on January 3, 2012, regarding this matter; DTC Todd advised respondent that he was currently in default for failing to answer the NDC and that DTC Todd would request entry of default if respondent did not file a response by noon on January 13, 2012; and (4) on January 17, 2012, the State Bar filed a Notice to Court re: Motion for Entry of Default stating that the State Bar had reached agreement on a stipulation with respondent.

Respondent failed to file a response to the NDC. On January 20, 2012, the State Bar properly served a motion for entry of respondent's default. The motion, which was filed on

January 24, 2012, complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar deputy trial counsel declaring the additional steps taken to provide notice to respondent. (Rule 5.80.) The motion also notified respondent that if he did not timely move to set aside his default, the court would recommend his disbarment. Respondent did not file a response to the motion, and his default was entered on February 7, 2012. The order entering the default was served on respondent at his membership records address by certified mail, return receipt requested.³ The court also ordered respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time.

Respondent also did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On September 18, 2012, the State Bar filed the petition for disbarment.⁴ As required by rule 5.85(A), the State Bar reported in the petition that: (1) no contact with the respondent has occurred since respondent's default was entered; (2) respondent has at least one other disciplinary matter pending;⁵ (3) respondent has no prior record of discipline; and (4) the Client Security Fund (CSF) has not made any payments resulting from respondent's conduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on October 10, 2012.

³ The return receipt was returned to the State Bar Court by the United States Postal Service indicating delivery of the order on March 5, 2012, to respondent's agent. However, the name and signature of the agent on the return receipt were illegible.

⁴ The petition was served on September 14, 2012, by certified mail, return receipt requested, to respondent at his membership records address and a courtesy copy was sent to respondent via email.

⁵ State Bar records, however, do not reflect that any other proceedings have been filed against respondent.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that respondent is culpable as charged and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

Case Number 11-O-13187 (Hirschman Matter)

Count One – respondent willfully violated Business and Professions Code section 6103 (failure to obey a court order) by failing to pay sanctions in the amount of \$6,034.50 to Trepel, McGrane, Greenfield, LLP and by failing to pay sanctions in the amount of \$1,800 to the plaintiffs as ordered by the court in *William F. Hirschman, et al., v. JHRV Enterprises, Inc., et al.*, Santa Clara County Superior Court, case No. 1-09-CV152909.

Count Two – respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation) by not providing a written response to the allegations raised in the complaint made to the State Bar about respondent's failure to obey court orders in the *Hirschman* case.

Count Three – respondent willfully violated Business and Professions Code section 6106 by misrepresenting to a State Bar investigator that respondent had paid the sanctions when he had failed to do so.

Disbarment is Mandated under the Rules of Procedure

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent's disbarment must be recommended. In particular:

(1) the NDC was properly served on respondent under rule 5.25;

(2) respondent had actual notice of the proceedings prior to the entry of his default;

(3) the default was properly entered under rule 5.80; and

(4) the factual allegations in the NDC deemed admitted by the entry of the default support a finding that respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite actual notice and opportunity, respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court must recommend his disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent William Lynn Smith, Jr. be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

Payment of Sanctions

The court also recommends that respondent be ordered to:

- (1) pay sanctions in the amount of \$6,034.50 to Trepel, McGrane, Greenfield, LLP which were ordered by the Santa Clara County Superior Court in *William F. Hirschman, et al., v. JHRV Enterprises, Inc., et al.*, case No. 1-09-CV152909; and
- (2) pay sanctions in the amount of \$1,800 as ordered by the Santa Clara County Superior Court to the plaintiffs in *William F. Hirschman, et al., v. JHRV Enterprises, Inc., et al.*, case No. 1-09-CV152909.

California Rules of Court, Rule 9.20

The court also recommends that respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and

(c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that William Lynn Smith, Jr., State Bar number 242143, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: December ____, 2012

LUCY ARMENDARIZ
Judge of the State Bar Court